

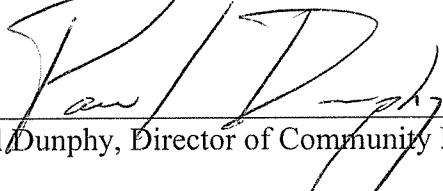
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PO Box 1749
Halifax, Nova Scotia
B3J3A5 Canada

Peninsula Community Council
November 10, 2008

TO: Chair and Members of the Peninsula Community Council

SUBMITTED BY: 
Paul Dunphy, Director of Community Development

DATE: October 28, 2008

SUBJECT: Case 00930 - Development Agreement - 6955 Bayers Road, Halifax

SUPPLEMENTARY REPORT

ORIGIN

- Request by 3106631 Nova Scotia Limited to allow for a 16 storey, multiple unit dwelling with 121 units at 6955 Bayers Road, Halifax, by development agreement.
- Approval of amendments to the Halifax Municipal Planning Strategy (MPS) and Land Use By-law (LUB) by Regional Council on August 12, 2008.
- Provincial Ministerial approval of amendments to the Halifax MPS and Halifax Peninsula LUB.

RECOMMENDATION

It is recommended that Peninsula Community Council:

1. Move Notice of Motion to consider approval of the proposed Development Agreement contained in Attachment A to allow for a 121 unit apartment building, and schedule a public hearing;
2. Approve the proposed development agreement as contained in Attachment A; and
3. Require that the development agreement be signed and delivered within 120 days, or any extension thereof granted by Community Council on request of the Applicant, from the date of final approval by Community Council or any other bodies as necessary, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

With the amendments to the Halifax MPS and LUB for this property now in effect, Council is in a position to make a decision relative to the proposed development agreement to allow a 16 storey, 121 unit apartment building and donated public open space at 6955 Bayers Road, Halifax (refer to Attachment A).

Location, Designation and Zoning: The subject property, which is located on the north side of Bayers Road, was part of the former St. Andrews School site previously owned by Halifax Regional Municipality (refer to Map 1). The site, abutting the St. Andrews Community Centre and Alta Gymnastics, is 2.22 acres in area and is now vacant. The lands adjoin an HRM owned cemetery which is the Memorial Grave Site for Unidentified Victims of the Halifax Explosion, and separate, private family plots.

The property is located within the Park and Institutional (P) Zone (Refer to Map 1). The lands are designated Residential Environments on the Generalized Future Land Use Map of the Halifax Municipal Planning Strategy (MPS) (Refer to Map 2) and the property falls within a future Urban District Centre designation under the Regional Plan.

History of the Application:

- In July, 2006, an application was received for 2 eight storey residential buildings.
- On January 24, 2007, a Public Information Meeting (PIM) was held which identified 4 different alternatives for development of the site.
- On February 11, 2008, a report including a draft development agreement, was sent to Peninsula Community Council (PCC) who deferred the item.
- On March 3, 2008, PCC moved a Notice of Motion for the development agreement and recommended that Regional Council (RC) give First Reading to the proposed amendments to the Halifax MPS and the Halifax Peninsula LUB and schedule a joint public hearing (PH) with PCC.
- On March 25, 2008, PCC requested that staff set up a second PIM.
- On April 23, 2008, the second PIM was held.
- On June 9, 2008, PCC rescinded its Motion of March 3, 2008, and then moved that RC give first reading to only the amendments to the Halifax MPS and Halifax Peninsula LUB, schedule a PH and recommended that RC approve the amendments.
- On June 17, 2008, RC gave First Reading and set a PH date.
- On July 8, 2008, RC deferred the PH.
- On August 12, 2008, RC held a PH and adopted the proposed policy amendments.
- Letter dated October 1, 2008, received from Service Nova Scotia and Municipal Relations (SNSMR) indicating that the amendments have been reviewed pursuant to Section 208 of the *Municipal Government Act* and are not subject to approval by the Minister of SNSMR.

- On October 11, 2008, a Notice of Approval ad for the MPS and LUB Amendments was published in the Chronicle Herald.

DISCUSSION

Process: On August 12, 2008 Regional Council held a public hearing to consider amendments to the Halifax MPS and Halifax Peninsula LUB. Regional Council approved the MPS and LUB amendments set out in Attachment B which establish the policy framework under which the proposed development agreement is to be reviewed. However, PCC could not consider the development agreement until the MPS and LUB amendments became effective as set out under the *Municipal Government Act* (MGA).

The MPS and LUB amendments have been reviewed by the province and, as a result, are now in effect. PCC is in a position to consider the proposed development agreement based upon the amendments which were developed to enable this project.

The proposed development agreement was **not** part of the public hearing process. PCC may choose to move a Notice of Motion to consider approval of the proposed Development Agreement and schedule a public hearing.

The recently approved site specific MPS policy which was created to enable this proposal (Policy 2.14 of Section II - City Wide Objectives and Policies - refer to Attachment B) permits multiple unit residential development by development agreement. Policy 2.14.1 identifies factors for which conditions may be set out in the development agreement.

The following is an outline of how the factors have been addressed through the development agreement:

- a) the adequacy of the **servicing capacity** of the site
 - the site is fully serviced
 - the existing access driveway from Bayers Road is to be upgraded
- b) the **architectural design of the building** including building materials
 - high quality building materials are to be used including the aluminum/glass curtain wall, tinted precast concrete panels and concrete columns
 - the mechanical equipment is to be screened from public view
- c) the **adequacy of parking** facilities
 - a minimum of 125 vehicular parking spaces are required on site
 - a minimum of 60 bicycle parking spaces are required, most of which are located inside the building
- d) **preservation and/or enhancement of the function of the larger site** which includes the existing Cemetery and Community Centre
 - a maintained and improved visual and physical connection to and between the

- Memorial Grave Site for Unidentified Victims of the Halifax Explosion, the new public open space and the existing Community Centre is to be provided
- improvements to the existing access driveway including the provision of a sidewalk
 - a right-of-way is to be provided across the residential site for public access
 - provision of outdoor bicycle parking adjacent Alta Gymnastics
- e) provide opportunities for **public access to the existing indoor and outdoor components** of the larger site
- improvements to the access driveway including the provision of a sidewalk
 - provision of a ceremonial access drive through the public open space for the Memorial Grave Site for Unidentified Victims of the Halifax Explosion
- f) provision for vehicular and pedestrian **access and egress** patterns from the surrounding area
- upgrading of the existing HRM owned access driveway from Bayers Road including the provision of a sidewalk
 - reconfiguration of the existing vehicular access onto Bayers Road
- g) the provision of **open space**
- the donation to HRM of more than one half of an acre of developed public open space including tree planting, benches, garbage receptacles, sod and fencing
 - the inclusion of private terraces and balconies
- h) adequate site **landscaping and buffering**
- a detailed landscape plan is required to be provided at the permit stage for the landscaped podium, site, public open space and the Memorial Grave Site
 - improvements in the form of decorative metal fencing and new trees are to be provided for the Memorial Grave Site
 - buffering in the form of a physical setback which exceeds the minimum requirement
- i) **scale, height and massing of the buildings**
- the building is required to meet the R-3 (Multiple Dwelling) Zone requirements
 - the maximum building height shall not exceed 55 metres

Policy Review: The Regional Plan designates this area as an Urban District Centre which calls for a mix of high density residential, commercial, institutional and recreational uses. With commercial and high density residential uses to the west and recreation and institutional uses bordering this site, a high density, residential use is consistent with the intent of the Regional Plan to allow for mixed use development in this area.

Conclusion: Staff are of the opinion that the proposed development agreement is consistent with the relevant policies of the Halifax MPS and the Regional Plan, and recommend that PCC proceed to set a public hearing date to consider approval of the proposed development agreement as contained in Attachment A of this report.

BUDGET IMPLICATIONS

There are no budget implications. The Developer will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement.

The administration of the agreement can be carried out within the approved budget with existing resources.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating Reserves, as well as any relevant legislation.

ALTERNATIVES

1. Peninsula Community Council may choose to move Notice of Motion to consider approval of the proposed Development Agreement contained in Attachment A of this report to allow for a 16 storey, 121 unit apartment building, and schedule a public hearing.
2. Peninsula Community Council may choose to refuse the proposed Development Agreement to allow for a 16 storey, 121 unit apartment building. Should Council refuse the proposed development agreement, pursuant to the *Municipal Government Act* reasons must be given for the refusal based on the recently approved policy framework.

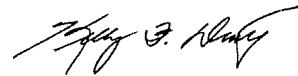
ATTACHMENTS

Map 1	Location and Zoning
Map 2	Generalized Future Land Use
Attachment A	Proposed Development Agreement
Attachment B	Relevant MPS and LUB Policy adopted August 12, 2008

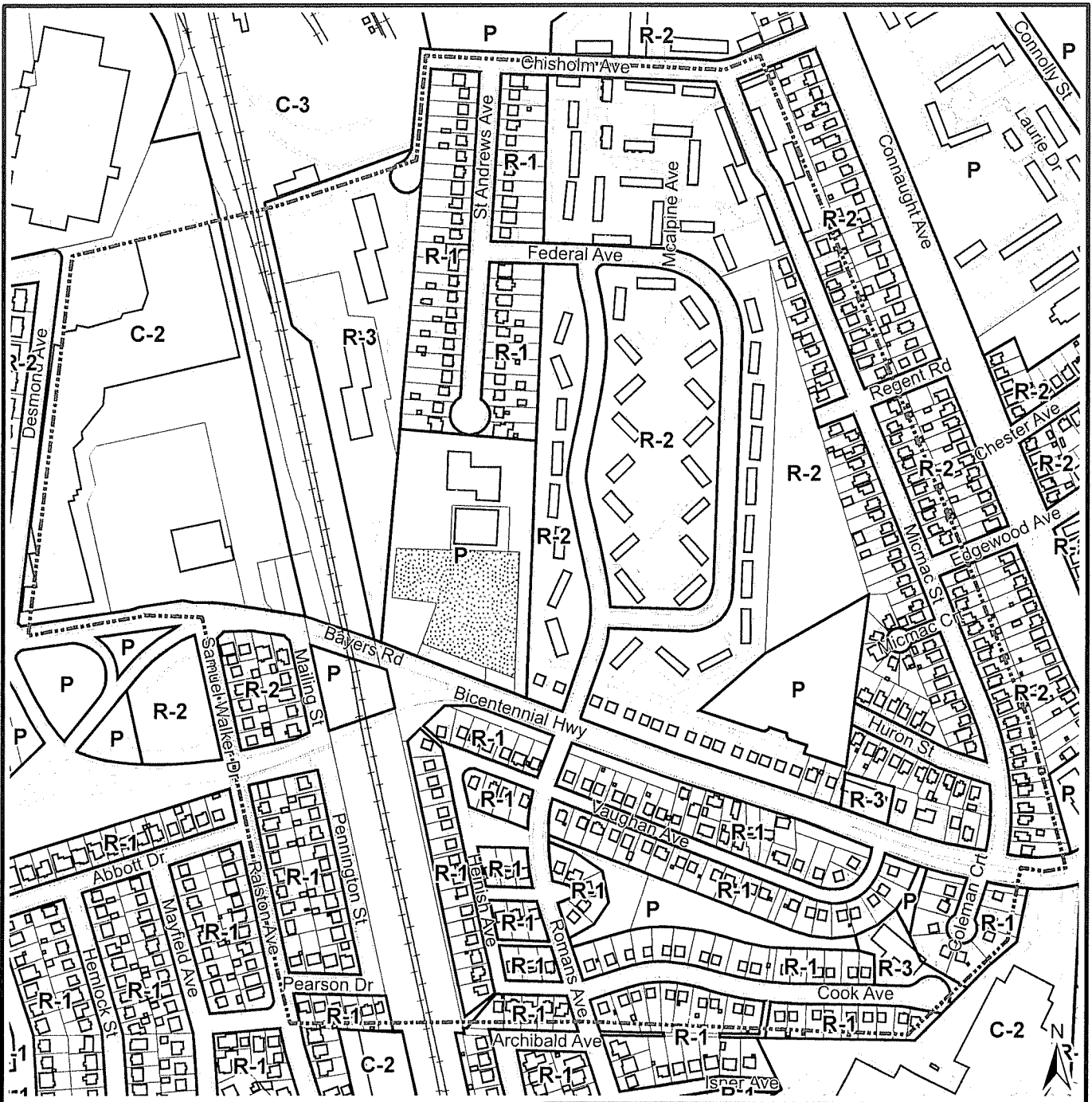
A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Randa Wheaton, Senior Planner, Community Development, 490-4499

Report Approved by:





Kelly Denty, Acting Manager, Planning Services, 490-6011



Map 1 - Location and Zoning

6955 Bayers Road
Halifax

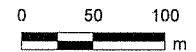
-  Subject property
-  Area of notification

Halifax Peninsula
Land Use By-Law Area

Zone

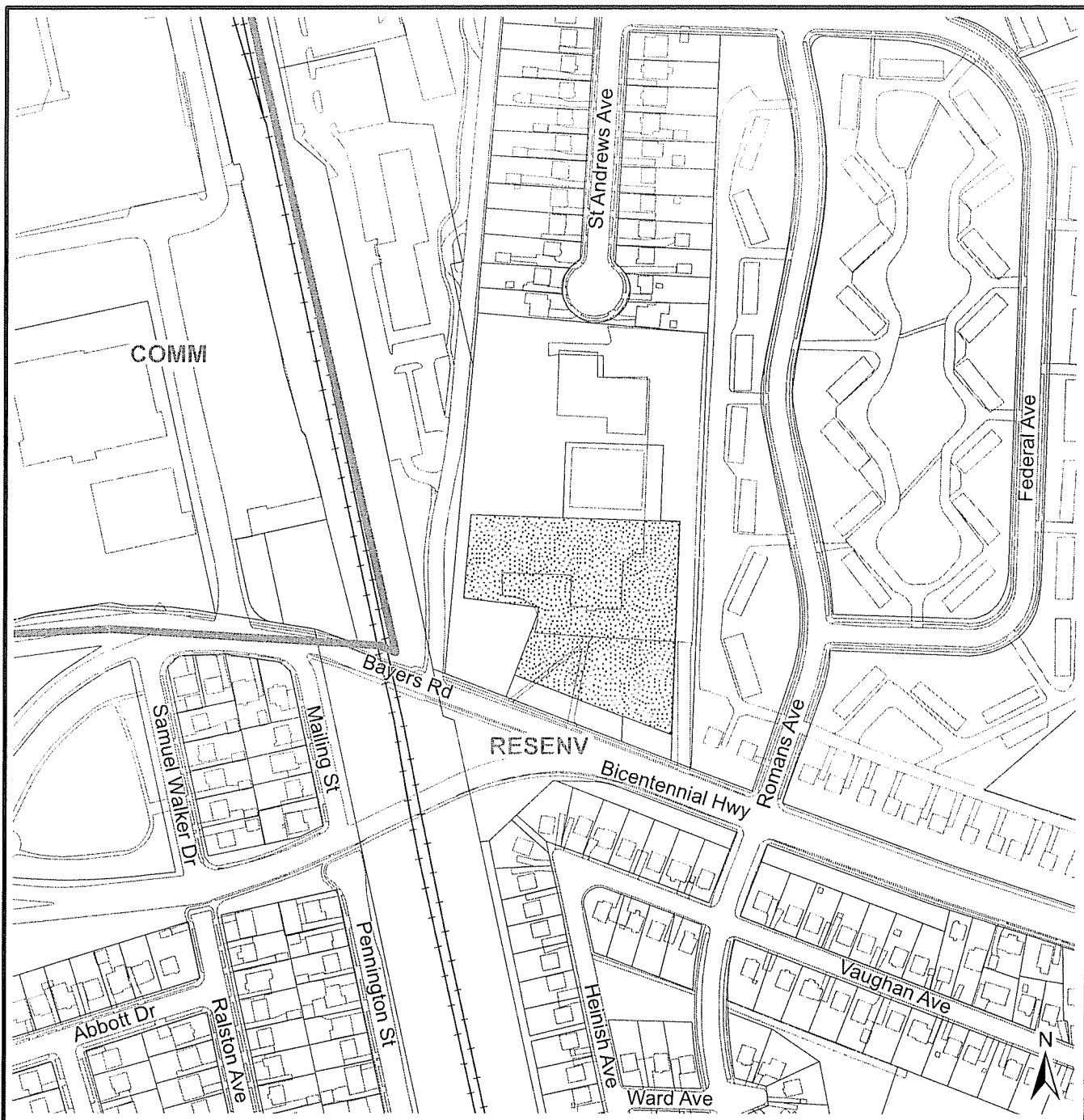
- R-1 Single Family Dwelling
- R-2 General Residential
- R-2T Townhouse
- R-3 Multiple Dwelling
- C-2 General Business
- C-3 General Industrial
- P Park and Institutional

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES




This map is an unofficial reproduction of a portion of the Zoning Map for the Halifax Peninsula Land Use By-Law area

HRM does not guarantee the accuracy of any representation on this plan



Map 2 - Generalized Future Land Use

6955 Bayers Road
Halifax

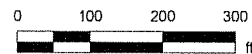
 Subject property

Halifax Plan Area

Designation

RESENV Residential Environments
COMM Commercial

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES



This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the Halifax Plan Area

HRM does not guarantee the accuracy of any representation on this plan

1.2 **Applicability of Land Use By-law and Subdivision By-law**

Except as otherwise provided for herein, the development and use of the Lands shall comply with the requirements of the Halifax Peninsula Land Use By-law and the Subdivision By-law, as may be amended from time to time.

1.3 **Applicability of Other By-laws, Statutes and Regulations**

1.3.1 Further to Section 1.2, nothing in this Agreement shall exempt or be taken to exempt the Developer, lot owner or any other person from complying with the requirements of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Owner agrees to observe and comply with all such laws, by-laws and regulations in connection with the development and use of the Lands.

1.3.2 The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of the Municipality and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer or appropriate professional as required by this Agreement or other approval agencies.

1.4 **Conflict**

1.4.1 Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.

1.4.2 Where the written text of this agreement conflicts with information provided in the Schedules attached to this agreement, the written text of this agreement shall prevail.

1.4.3 Where metric values conflict with imperial values within the written text of this Agreement, the metric values shall prevail.

1.5 **Costs, Expenses, Liabilities and Obligations**

The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all Federal, Provincial and Municipal regulations, by-laws or codes applicable to the Lands.

1.6 Provisions Severable

The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

PART 2: USE OF LANDS AND DEVELOPMENT PROVISIONS

2.1 Schedules

The Developer shall develop the lands in a manner, which, in the opinion of the Development Officer, is generally in conformance with Schedules B to F inclusive attached to this agreement and the plans numbered 00930-0024 to 00930-0028 inclusive filed in the Halifax Regional Municipality as Case Number 00930 and shall not develop or use the Lands for any purposes other than a 121 unit 16 storey residential apartment building.

The schedules are:

Schedule A	Legal Description of the Lands
Schedule B	Site Plan numbered 00930-0028
Schedule C	East Building Elevation (main entrance) numbered 00930-0024
Schedule D	Southwest Elevation (Bayer's Road) numbered 00930-0025
Schedule E	Northwest Elevation (Memorial Site) numbered 00930-0026
Schedule F	Northeast elevation (Comm Ctr) numbered 00930-0027

2.2 Requirements Prior to Approval

- 2.2.1 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any of the uses permitted by this Agreement unless an occupancy permit has been issued by the Municipality. No Occupancy Permit shall be issued by the Municipality unless and until the Developer has complied with all applicable provisions of this Agreement and the Land Use By-law (except to the extent that the provisions of the Land Use By-law are varied by this Agreement) and with the terms and conditions of all permits, licenses, and approvals required to be obtained by the Developer pursuant to this Agreement.
- 2.2.2 Prior to the issuance of any municipal permits, the Developer shall complete the MICI (Multi-unit/Industrial/Commercial/Institutional/Commercial) permit review process.
- 2.2.3 The Developer shall convey to the Municipality a 6 metre (20 foot) wide right-of-way (R.O.W.) as specified under Section 2.6.2 of this agreement.
- 2.2.4 The Developer shall convey to the Municipality the public open space as identified on Schedule B as specified under Sections 2.8.8 and 2.11 of this agreement.

2.3 General Description of Land Use

The use of the Lands permitted by this Agreement, subject to its terms and as generally illustrated on the Schedules attached hereto, are as follows:

- a) One sixteen (16) storey, 121 unit multiple unit residential building, including an underground parking level; and
- b) public open space.

2.4 Detailed Provisions for Land Use

2.4.1 The sixteen storey building shall be designed in accordance with the Multiple Dwelling (R-3) Zone provisions contained within the Land Use By-law for Halifax Peninsula.

2.4.2 For the purposes of determining permissible density, one bedroom plus den units shall be considered to be a one-bedroom unit.

2.4.3 The Development Officer may approve minor modifications to the following provided such modifications are minor in nature and, in the opinion of the Development Officer, further enhance the appearance of the building and the Lands:

- (a) Changes to the architectural requirements/details/design of the building as shown on the attached schedules or as detailed in Section 2.5 such as facade features and the type of exterior materials;
- (b) A change of the number of residential units provided the allowable density in the Halifax Peninsula Land Use By-law is not exceeded and that plans are submitted for any changes to the building design;
- (c) Changes to the design of public open space including landscaping, size or configuration;
- (d) Changes to the landscaping measures as detailed in Section 2.8.

2.4.4 The area of land to be conveyed to the Municipality for public open space purposes, comprising 2,128 square metres (22,905 square feet), shall be allowed to be used for the purpose of calculating density, open space and landscaped open space requirements and shall function as recreational amenity space for the proposed development.

2.5 Architectural Requirements

2.5.1 The Developer agrees that the building constructed on the Lands shall be as generally illustrated on Schedules B to F inclusive.

2.5.2 Architectural treatment shall be continued around all sides of the building as identified on Schedules C, D, E and F.

- 2.5.3 Exterior building materials shall not include vinyl siding or exposed treated lumber but may include any one or more of the following:
- (a) aluminum/glass curtain wall;
 - (b) tinted precast concrete panels;
 - (c) concrete columns;
 - (d) noncombustible cladding; or
 - (e) acceptable equivalents in the opinion of the Development Officer.
- 2.5.4 The maximum height of the building shall not exceed 55 metres (180 feet) above the existing average grade of the abutting access driveway.
- 2.5.5 The dwelling units shall not contain any non-habitable rooms, which in the opinion of the Development Officer, could be converted to habitable rooms.
- 2.5.6 Roof materials shall be comprised of prefinished metal roofing/siding, or equivalent in the opinion of the Development Officer.
- 2.5.7 All vents, down spouts, flashing, electrical conduits, metres, service connections, and other functional elements shall be treated as integral parts of the design. Where appropriate these elements shall be painted to match the colour of the adjacent surface, except where used expressly as an accent.
- 2.5.8 All roof mounted mechanical or telecommunication equipment shall be visually integrated into the roof design or screened from public view.
- 2.5.9 Any exposed foundation in excess of one (1) metre (3 feet) in height shall be architecturally detailed, veneered with stone or brick or treated in an equivalent manner acceptable to the Development Officer.
- 2.5.10 A minimum of 60 bicycle parking spaces shall be provided with a minimum of 50 provided inside the building.
- 2.5.11 Decorative lighting is to be provided on the building face at the pedestrian level for security and aesthetic purposes. Lighting shall be directed to driveways, parking areas, building entrances and walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings.
- 2.5.12 The roof top perimeter fencing/guardrail and balcony railings shall be of decorative metal and tempered, tinted glass complementary to the building.
- 2.5.13 The Developer shall be entitled to modify the internal floor plans and the configuration of internal units provided the number of units and building size does not increase and the exterior appearance of the building is not affected.

2.5.14 The building shall include designated space for three stream (refuse, recycling and composting) source separation services. This designated space for source separation services shall be shown on the building plans and approved by the Development Officer and Building Inspector in consultation with Solid Waste Resources.

2.6 **Parking, Circulation and Access**

2.6.1 The internal driveway layout and the number and layout of at-grade parking spaces on the Lands shall be as generally illustrated on Schedule "B". The Developer agrees that the parking on the Lands shall comply with the following:

- (a) a minimum of 100 spaces shall be provided underground and a minimum of 125 parking spaces shall be provided in total.
- (b) all parking areas, driveways, circulation aisles and walkways shall have a finished hard surface such as asphalt, concrete, paving blocks or an acceptable equivalent in the opinion of the Development Officer.
- (c) all parking lots shall be delineated by curbing and such curbing shall not be asphalt.

2.6.2 Prior to the issuance of an Occupancy Permit, the Developer shall convey a 6 metre (20 foot) wide right-of-way (R.O.W.) to the Municipality, in a form acceptable to the Municipality, to provide an unencumbered public access for vehicles to the existing Cemetery, Gymnasium and Community Centre as shown on Schedule B.

2.7 **Amenity Space**

Amenity space shall be set aside for recreational purposes such as common recreational areas, play areas, recreational rooms, balconies and roof decks. Amenity space shall include all area(s) set aside for the purposes of visual improvement or recreation and not used for buildings, structures, parking areas or driveways, and shall include areas of grass, flower beds, shrubbery, trees and landscaping, and balconies and sundecks.

2.8 **Landscaping**

2.8.1 All plant material shall conform to the Canadian Nursery Trades Association Metric Guide Specifications and Standards and sodded areas to the Canadian Nursery Sod Growers' Specifications

2.8.2 A detailed Landscape Plan prepared by a Landscape Architect (that is a full member, in good standing, of the Canadian Society of Landscape Architects) shall be submitted with the application for Development Permit. The detailed landscape plan shall include, as a minimum, planting as identified in this agreement. The landscape proposal for the lands currently owned or to be owned by the Municipality to be reviewed and found satisfactory to the Parkland Planner and the Development Officer.

- 2.8.3 Planting details for each type of plant material proposed on the plan shall be provided, including species list with quantities, size of material, and common and botanical names (species and variety).
- 2.8.4 Construction Details or Manufacturer's Specifications for all landscaping features such as fencing and benches shall be provided to the Development Officer, and shall describe their design, specifications, materials and placement so that they will enhance the design and the character of the surrounding area.
- 2.8.5 It is the responsibility of the Developer to ensure that the landscaped podium is designed to be capable of supporting loads from the weight of landscaping including such items as decorative planters/pots, the anticipated mature weight of the plant material, as well as the weight of any hard surface material.
- 2.8.6 A minimum of 18, salt tolerant, high branching deciduous trees, minimum 60 mm caliper (2.4 inch diameter) in size, shall be planted on the Lands adjacent to the existing access road and along the Bayer's Road frontage. A minimum of 15, mid size trees, a minimum 45 mm caliper (1.7 inch diameter) in size, and 30 shrubs, a minimum height of 60 cm (2 ft.) shall be planted on the landscaped podium and to provide screening for the parking areas. Outdoor bicycle racks and associated hard surface shall be provided in the location indicated on Schedule B.
- 2.8.7 The Developer shall provide new, decorative metal fencing, to the satisfaction of the Parkland Planner, to be located to the west, south and east of the existing Memorial site as shown on Schedule B. The eight existing overgrown conifer trees within the Memorial site are to be replaced by the Developer with an equal number of trees of a size and type satisfactory to the Parkland Planner and the Municipality's Urban Forester. The installation work shall be co-ordinated with the Municipality's Cemeteries/Capital District Maintenance section. The Developer agrees to make every effort to preserve the existing trees along the west side of the memorial site and, in particular, during the removal and installation of fencing.
- 2.8.8 The Developer shall be responsible for completing improvements to the public open space as identified on Schedule B and as further detailed in the landscape plans required under section 2.8.2 of this agreement to the satisfaction of the Parkland Planner prior to the conveyance of ownership to the Municipality and prior to the issuance of any Occupancy Permit for the building. The landscape treatment shall include tree planting, benches, garbage receptacles, fencing, a 3.6 metre (12 ft.) wide access drive (with opportunities for parallel parking for use by the cemetery) and be fine graded, top soiled and sodded.
- 2.8.9 All disturbed areas shall be reinstated to original condition or better.

- 2.8.10 Prior to issuance of the Occupancy Permit the Developer shall submit to the Development Officer a letter certifying that all landscaping has been completed according to the terms of this Development Agreement.
- 2.8.11 Notwithstanding the above, should the weather or seasonal conditions be such that the Developer is unable to complete the landscape works (i.e., between November 15 and March 15) then the Occupancy Permit may be issued provided the Developer supplies security in the amount of 110 per cent of the estimated cost to complete all of the landscaping. The security shall be in favour of the Municipality and shall be in the form of a certified cheque or automatically renewing, irrevocable letter of credit issued by a chartered bank. The security shall be returned to the Developer only upon completion of the work as described herein and illustrated on the Schedules, and as approved by the Development Officer. Should the Developer not complete the landscaping within twelve months of issuance of the Occupancy Permit, the Municipality may use the security to complete the landscaping as set out in this Section of the agreement. The Developer shall be responsible for all costs in this regard exceeding the security. The security or any unused portion thereof shall be returned to the Developer upon completion of the work and its certification.

2.9 **Maintenance**

The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the interior and exterior of the building, fencing, walkways, recreational amenities, parking areas and driveways, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow removal/sanding of walkways and driveways, including the existing access road abutting the site. The maintenance of the public open space will become the responsibility of the Municipality upon its acceptance of the deed for that parcel.

2.10 **Archaeological Monitoring and Protection**

The lands at 6955 Bayers Road immediately abut an existing cemetery resulting in a high potential for archeological impact. The Developer shall contact the Curator of Special Places with the Heritage Division of the Department of Tourism, Culture and Heritage of the Province of Nova Scotia prior to any disturbance of the site and the Developer shall comply with requirements set forth by the Province in this regard. The Developer shall provide on-site monitoring by a Professional Archaeologist during any excavation adjacent to the east and north sides of the Memorial site, pursuant to the requirements of the Nova Scotia Museum under the *Special Places Protection Act*.

2.11 Public Open Space

- 2.11.1 The Developer shall convey to the Municipality public open space, of approximately 2,128 square metres (22,905 square feet) (as shown on Schedule B) fully developed as identified in Section 2.8.8., upon completion of all site works and prior to the issuance of occupancy permits for the building. The existing cemetery shall be upgraded in accordance with Schedule B and Section 2.8.7 of this agreement by the Developer prior to the issuance of an Occupancy Permit for the building.
- 2.11.2 Should the landscape work in the public open space make the public open space not ready for donation to the Municipality as a result of weather or seasonal conditions such that the Developer is unable to complete the landscape works (i.e., between November 15 and March 15) then the land shall be deeded to the Municipality prior to issuance of an Occupancy Permit and the Developer shall provide a cost estimate for all incomplete work, which includes itemized unit costs and includes a minimum of 10% of the total for a contingency fee, to the Development Officer and shall provide Equivalent Value security in favour of the Municipality in the form of a certified cheque or irrevocable automatically renewing Letter of Credit issued by a chartered bank in the amount of 110% of the amount of the cost estimate. The Development Officer shall return the security to the Developer upon acceptance of the outstanding site works. Should the outstanding landscape works not be completed within the growing season immediately following the issuance of the Occupancy Permit for the building then the securities shall be cashed and utilized for the completion of the outstanding landscape works.

PART 3: STREETS AND MUNICIPAL SERVICES

- 3.1 All construction shall satisfy the Municipal Service Systems Specifications and By-law S-300 unless otherwise provided for in this Agreement and shall receive written approval from the Development Engineer prior to undertaking the work.
- 3.2 Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Development Officer, in consultation with the Development Engineer.
- 3.3 The Developer shall be responsible for the upgrading of the existing HRM-owned access driveway from Bayers Road along the eastern property boundary of the site including new curb and gutter, new sidewalk, asphalt surface and reconfiguration of the access onto Bayers Road in accordance with Schedule B to the satisfaction of the Development Engineer.
- 3.4 If it is determined during the design or construction stage that the power pole located west of the access driveway on Bayers Road is to be relocated to accommodate any

improvements to the entrance driveway from the site to Bayers Road, the Developer shall be responsible for all associated costs.

PART 4: SUBDIVISION OF THE LANDS

Unless otherwise acceptable to the Development Officer, a subdivision application shall be submitted to the Development Officer in accordance with the plan presented as Schedule B and the Development Officer shall grant subdivision approval for the public open space subject to and in accordance with the Sections 2.8.2, 2.8.8 and 2.11 of this agreement.

PART 5: AMENDMENTS

5.1 Substantive Amendments

Amendments to any matters not identified under Section 5.2 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Municipal Government Act*.

5.2 Non-Substantive Amendments

The following items are considered by both parties to be non-substantive and may be amended by resolution of Peninsula Community Council:

- (a) The granting of an extension to the date of commencement of construction as identified in Section 7.3.1 of this agreement;
- (b) The granting of an extension to length of time for the completion of the development as identified in Section 7.4.1 of this agreement; and
- (c) A reduction in the height and/or floor area of the building.

PART 6: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

6.1 Enforcement

The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving written notification from an officer of the Municipality to inspect the interior of any building located on the Lands, the Developer agrees to allow for such an inspection during any reasonable hour within one day of receiving such a request.

6.2 Failure to Comply

If the Developer fails to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer thirty (30) days written notice of the failure or default, except that such notice is waived in matters concerning environmental protection and mitigation, then in each such case:

- (a) the Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defense based upon the allegation that damages would be an adequate remedy; and/or
- (b) the Municipality may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the development agreement, whereupon all reasonable expenses whether arising out of the entry onto the lands or from the performance of the covenants or remedial action, shall be a first lien on Lands and be shown on any tax certificate issued under the *Assessment Act*.
- (c) the Municipality may, by resolution, discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law; and/or
- (d) in addition to the above remedies the Municipality reserves the right to pursue any other remediation under the *Municipal Government Act* or Common Law in order to ensure compliance with this Agreement.

PART 7: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

7.1 Registration

A copy of this Agreement and every amendment and/or discharge of this Agreement shall be recorded at the office of the Registry of Deeds or Land Registry Office for Halifax, Nova Scotia and the Developer shall incur all cost in recording such documents.

7.2 Subsequent Owners

7.2.1 This Agreement shall be binding upon the parties thereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the lands which is the subject of this Agreement until this Agreement is discharged by the Council.

7.2.2 Upon the transfer of title to any lot, the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot.

7.3 Commencement of Development

7.3.1 In the event that development on the Lands has not commenced within three years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law.

7.3.2 For the purposes of this section, commencement shall mean the installation of the footings and foundation for the proposed building.

7.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 5.2, if the Municipality receives a written request from the Developer at least sixty (60) days prior to the expiry of the commencement of development time period.

7.4 **Completion of Development**

7.4.1 If the Developer fails to complete the development, or after five years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office, whichever time period is less, Council may review this Agreement, in whole or in part, and may:

- (a) retain the Agreement in its present form;
- (b) negotiate a new Agreement;
- (c) discharge this Agreement.

7.4.2 Upon the completion of the development or portions thereof, or within/after five years from the date of registration of this Agreement with the Registry of Deeds or Land Registry Office, whichever time period is less, Council may review this Agreement, in whole or in part, and may:

- (a) retain the Agreement in its present form;
- (b) negotiate a new Agreement;
- (c) discharge this Agreement on the condition that for those portions of the development that are deemed complete by Council, the Developer's rights hereunder are preserved and the Council shall apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Halifax Peninsula, as may be amended from time to time.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, A.D., 2008.

SIGNED, SEALED AND DELIVERED in
the presence of:

3106631 NOVA SCOTIA LIMITED

Per: _____

Per: _____

=====

SEALED, DELIVERED AND
ATTESTED to by the proper signing officers
of Halifax Regional Municipality, duly
authorized in that behalf, in the presence of:

=====

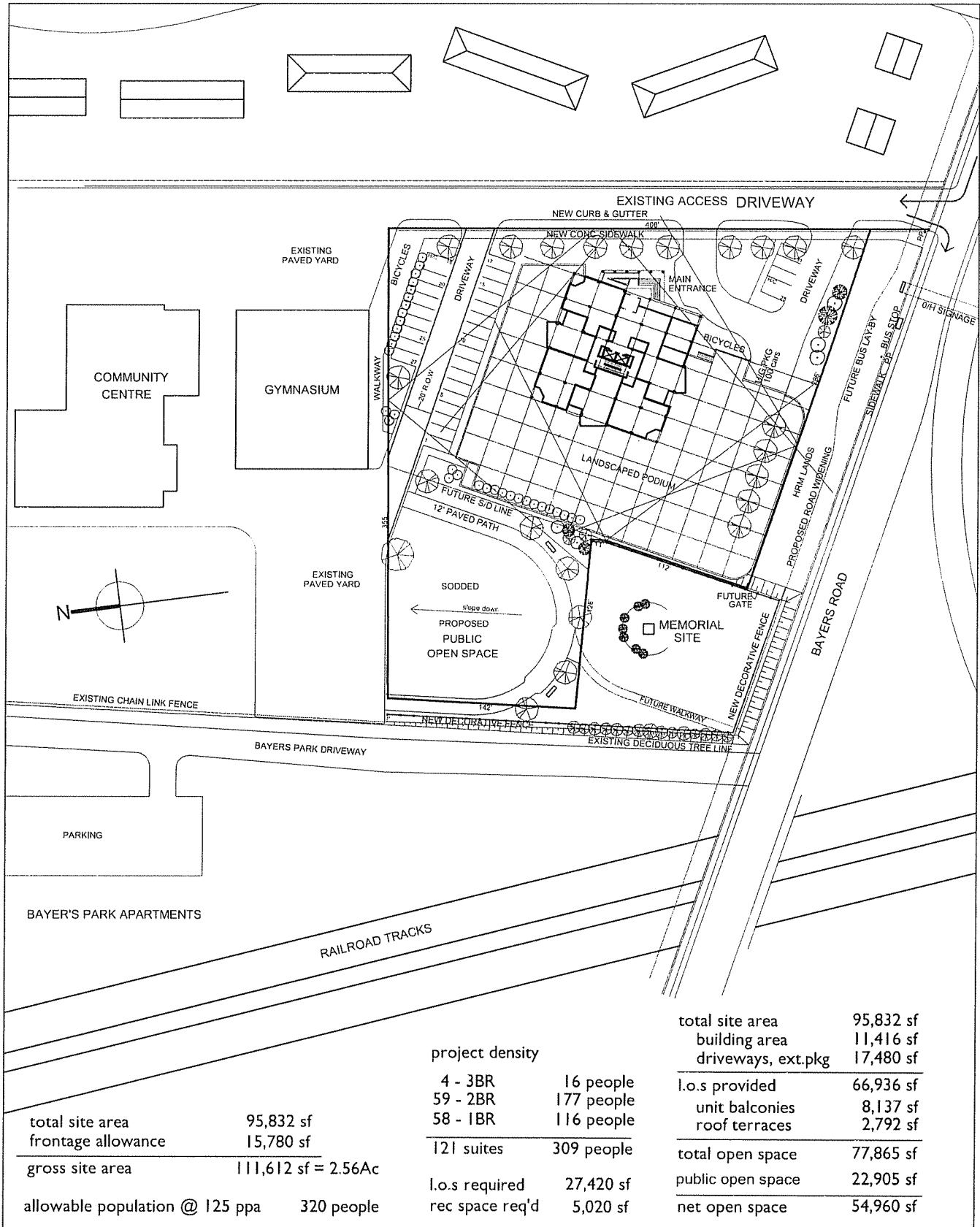
HALIFAX REGIONAL MUNICIPALITY

Per: _____

Mayor

Per: _____

Clerk



total site area	95,832 sf
frontage allowance	15,780 sf
gross site area	111,612 sf = 2.56Ac
allowable population @ 125 ppa	320 people

project density	
4 - 3BR	16 people
59 - 2BR	177 people
58 - 1BR	116 people
121 suites	309 people
l.o.s required	27,420 sf
rec space req'd	5,020 sf

total site area	95,832 sf
building area	11,416 sf
driveways, ext.pkg	17,480 sf
l.o.s provided	66,936 sf
unit balconies	8,137 sf
roof terraces	2,792 sf
total open space	77,865 sf
public open space	22,905 sf
net open space	54,960 sf

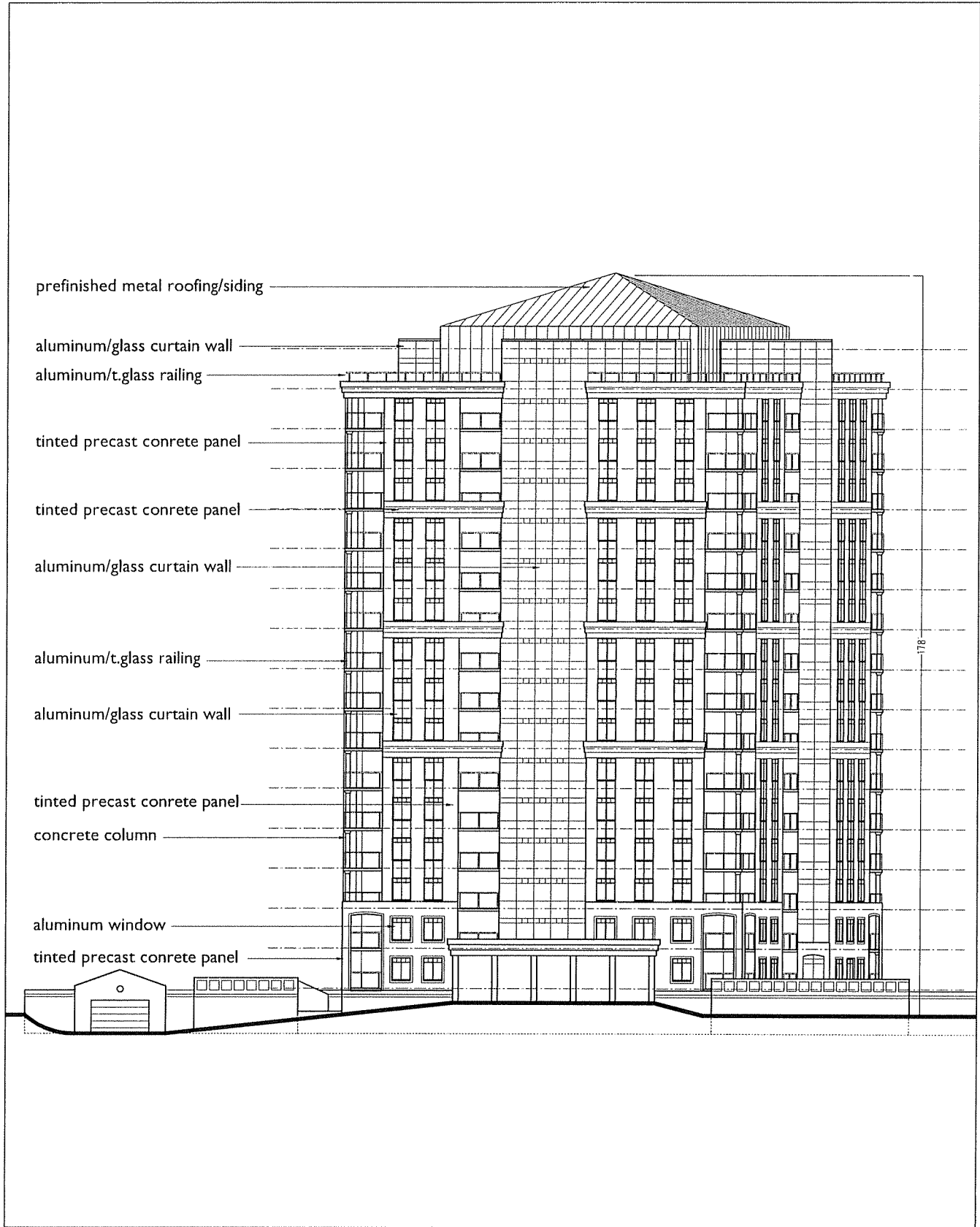
**KASSNER
GOODSPEED**
ARCHITECTS

RESIDENTIAL DEVELOPMENT
6955 BAYER'S ROAD, HALIFAX NS

SCHEDULE B
SITE PLAN

5663 CORNWALLIS STREET, SUITE 200
HALIFAX, N.S. B3K 1B6 902-422-1557

SCALE 1"=100'
Jan 13, 2008



**KASSNER
 GOODSPEED**
 ARCHITECTS

5663 CORNWALLIS STREET, SUITE 200
 HALIFAX, N S B3K 1B6 902-422-1557

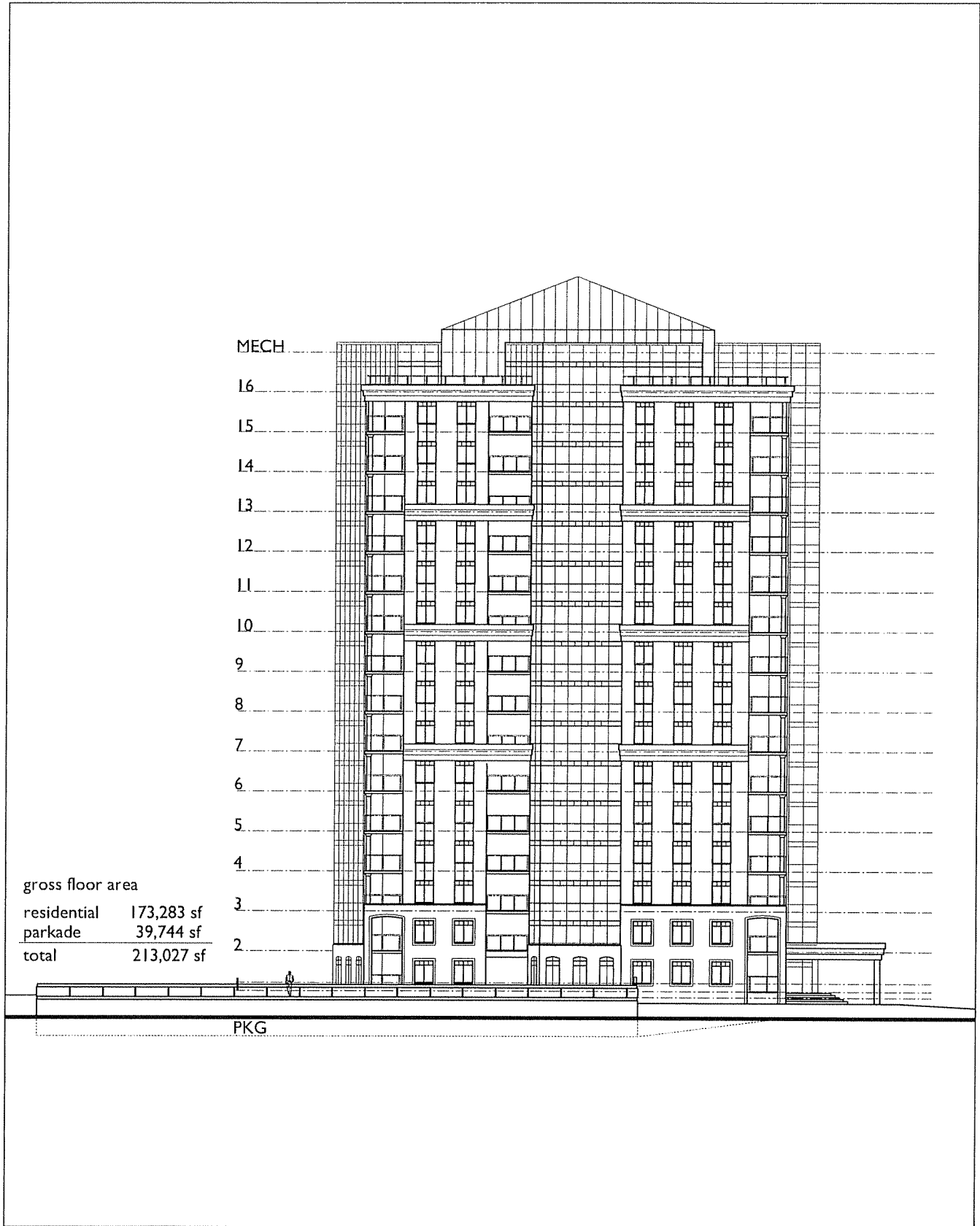
RESIDENTIAL DEVELOPMENT

6955 BAYER'S ROAD, HALIFAX NS

SCHEDULE C

EAST ELEVATION

SCALE 1"=32'
 Jan 08, 2008



**KASSNER
GOODSPEED**
ARCHITECTS

RESIDENTIAL DEVELOPMENT

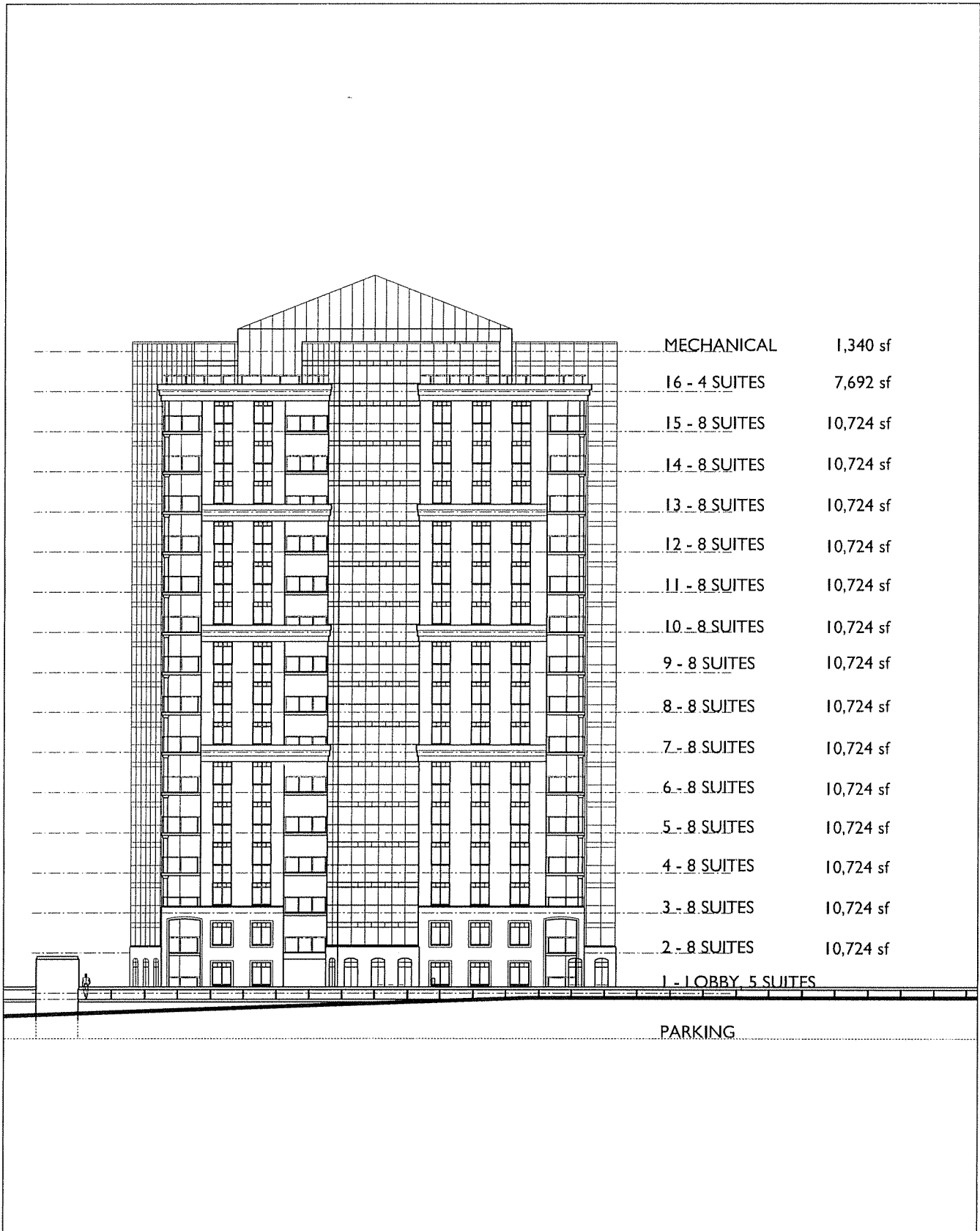
SCHEDULE D

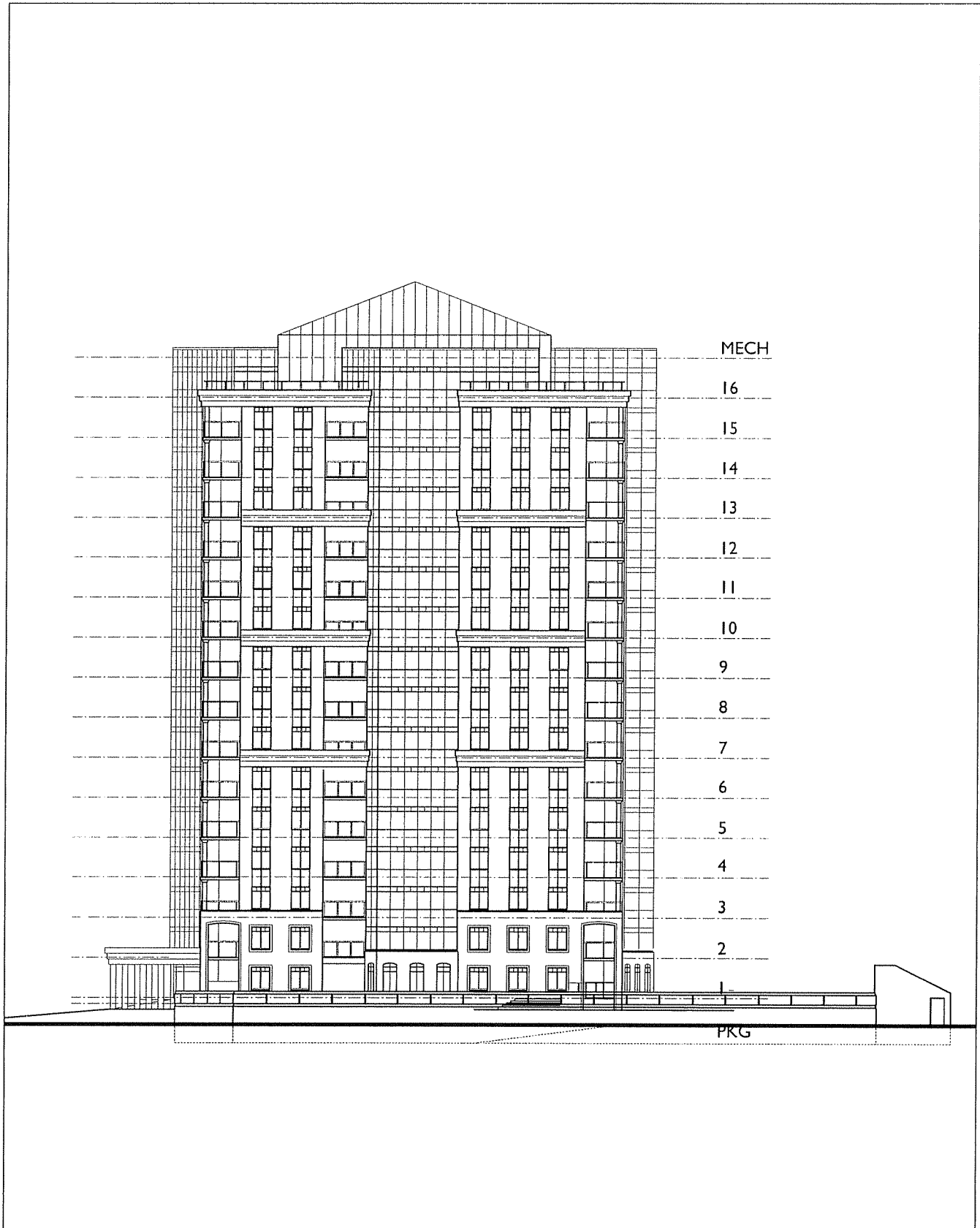
5663 CORNWALLIS STREET, SUITE 200
HALIFAX, N S B3K 1B6 902-422-1557

6955 BAYER'S ROAD, HALIFAX NS

SOUTHWEST ELEVATION

SCALE 1"=32'
Jan 08, 2008





**KASSNER
GOODSPEED**
ARCHITECTS

5663 CORNWALLIS STREET, SUITE 200
HALIFAX, NS B3K 1B6 902-422-1557

RESIDENTIAL DEVELOPMENT

6955 BAYER'S ROAD, HALIFAX NS

SCHEDULE F

NORTHEAST ELEVATION

SCALE 1"=32'
Jan 08, 2008

ATTACHMENT B

**Relevant Halifax Municipal Planning Strategy and
Halifax Peninsula Land Use By-law Policy
adopted August 12, 2008**

Section II (City-Wide Objectives and Policies) of the Halifax Municipal Planning Strategy

2.14 For the property at 6955 Bayers Road (PID # 40824005) the Municipality may permit the development of multiple unit residential buildings by development agreement.

2.14.1 Any development permitted pursuant to Policy 2.14 shall be compatible with the surrounding area and this shall be achieved by attention to a variety of factors for which conditions may be set out in the development agreement, such as but not limited to:

- a) the adequacy of the servicing capacity of the site;
- b) the architectural design of the building including building materials;
- c) the adequacy of parking facilities;
- d) preservation and/or enhancement of the function of the larger site which includes the existing Cemetery and Community Centre;
- e) provide opportunities for public access to the existing indoor and outdoor components of the larger site;
- f) provision for vehicular and pedestrian access and egress patterns from the surrounding area;
- g) the provision of open space;
- h) adequate site landscaping and buffering; and
- i) scale, height and massing of the buildings.

Halifax Peninsula Land Use By-law

99(9) 6955 Bayers Road (PID #40824005)

Council may, by development agreement, pursuant to Policies 2.14 and 2.14.1 of Section II of the Halifax Municipal Planning Strategy, permit the development of multiple unit residential buildings at 6955 Bayers Road, Halifax (PID #40824005).